

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION

**FILED**

FEB 14 2003

PEGGY B. DEANS, CLERK  
U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF N.C.

IN RE: )  
 )  
INTERNATIONAL HERITAGE, INC. ) CHAPTER 7  
 ) CASE NO. 98-02675-5-ATS  
 )  
Debtor. )

**MOTION OF TRUSTEE FOR  
AUTHORITY TO ENTER INTO SETTLEMENT AGREEMENT**

NOW COMES Holmes P. Harden, Trustee for the above-captioned Debtor, and requests an order authorizing him to enter into a Settlement Agreement with Erie Insurance Company, a copy of which is attached as Exhibit A and incorporated herein by reference. In support of its Application, Trustee states as follows:

1. International Heritage, Inc. and International Heritage Incorporated filed voluntary petitions in bankruptcy on November 25, 1998 and Holmes P. Harden ("Trustee") was appointed Chapter 7 Trustee. Erie Insurance Company provided Commercial General Liability ("CGL") Policy No. Q41 1650276 NC for International Heritage, Inc. with coverage for employee dishonesty with a limit liability of \$60,000.00 (the "Policy"). The Policy was effective from 5/16/98 to 5/16/99. The Policy was a renewal of previous policies ("Previous Policies"). In or about April, 2002, the Estate filed a claim with Erie Insurance Company against the Policy arising from certain conduct of Stanley H. Van Etten ("Van Etten"). On May 6, 2002, the Estate filed an Amended Proof of Loss with Erie Insurance Company.
2. Trustee alleges in the Proof of Loss that losses were incurred by the Debtor as a result of certain criminal acts resulting in losses to the debtor in an amount in excess of \$200,000.00.

3. Erie denies that the aforescribed losses are covered under the Policy on the grounds that the policy does not "cover any 'loss caused by any dishonest or criminal act committed by you or any of your members of a limited liability company, or any of your Partners, whether acting alone or in collusion with other persons.'" In addition, Erie contends that even if the acts of Van Etten are covered, the acts constitute one occurrence and the maximum payable for said occurrence is Ten Thousand Dollars (\$10,000.00).

4. Erie and Trustee are in a disagreement regarding coverage afforded to Debtor under the Policy. After due consideration of the merits of each parties respective contentions regarding the coverage issue, Trustee believes it in the best interest of creditors to enter into the settlement agreement with Erie.

5. Trustee and Erie propose a settlement of the claim whereby Sixty Thousand Dollars (\$60,000.00) will be paid by Erie to Trustee.

6. Pursuant to the Settlement Agreement, Erie will obtain releases from the Debtor from any further claims on the Policy and Previous Policies issued by Erie for Debtor.

**TRUSTEE BELIEVES THE PROPOSED SETTLEMENT  
IS REASONABLE**

7. Trustee is of the opinion that settling the above-described controversy is in the best interest of the expeditious administration of the Debtor's estate, given the merits of defenses and complexity, expense, and convenience and delay of litigation. Trustee therefore deems it appropriate and consistent with his duties to enter into the Settlement Agreement with Erie which settlement by its terms *inter alia* (a) brings substantial revenue

into the bankruptcy estate without incurring additional costs and expenses and (b) avoids complicated litigation concerning insurance coverage issues.

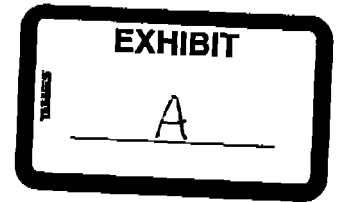
8. Trustee is authorized to execute the Settlement Agreement with court approval.

WHEREFORE, Trustee prays the Court that the Court authorize him to enter into a Settlement Agreement in the form attached hereto as Exhibit B on behalf of the debtor corporation.

This the 12<sup>th</sup> day of February, 2003.



Holmes P. Harden  
State Bar No. 835  
Chapter 7 Trustee  
Maupin, Taylor & Ellis, P.A.  
P.O. Box 19764  
Raleigh, NC 27619  
Telephone: 919/981-4000



UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION

IN RE: )  
 )  
INTERNATIONAL HERITAGE, INC. ) CHAPTER 7  
 ) CASE NO. 98-02675-5-ATS  
 )  
Debtor. )

**SETTLEMENT AGREEMENT and RELEASE**

This Settlement Agreement and Release ("Agreement") is made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2003, by and between Holmes P. Harden, as Bankruptcy Trustee for International Heritage, Inc. (the "Trustee") and Erie Insurance Company ("Erie") (collectively the "Parties").

WHEREAS, Erie issued a Commercial General Liability ("CGL") Policy No. Q411650276HC to International Heritage, Inc. ("IHI") for the period May 16, 1998 to May 16, 1999 (the "Policy");

WHEREAS, the Policy was the renewal of previous policies ("Previous Policies");

WHEREAS, Stanley H. Van Etten ("Van Etten"), an employee of International Heritage, may have engaged in conduct which resulted in a loss to IHI;

WHEREAS, IHI has sought coverage under the employee dishonesty endorsement of the Policy for all losses resulting from the conduct of Stanley Van Etten;

WHEREAS, a dispute has arisen between Erie and IHI regarding whether there is coverage under the Policy for the conduct of Van Etten;

WHEREAS, the Trustee and Erie desire to compromise, settle and relinquish all claims which IHI may have arising from the conduct of Van Etten in return for payment received and good and valuable consideration from Erie; and

WHEREAS, the Trustee has reviewed the contentions of Erie with respect to coverage issues and has determined in his business judgment that a resolution by way of this proposed settlement is appropriate and is in the best interest of the Estate;

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein and other good and valuable consideration, the Trustee and Erie agree as follows:

1. Trustee shall promptly file a motion with the Bankruptcy Court seeking the Court's approval of the settlement pursuant to Bankruptcy Rule 9019. Among other things, the Trustee's motion shall request the Bankruptcy Court to enter a final order and judgment approving the proposed settlement and finding that Erie is released from any and all obligations under the Policy or Previous Policies issued in favor of IHI, whether known or unknown, anticipated or unanticipated, past, present or future. The Trustee shall serve the motion on Erie and shall also provide Notice of Proposed Settlement to all interested parties, including without limitation, all of IHI's creditors (the "Interested Parties"). Among other things, the Trustee's notice shall apprise the Interested Parties of the terms of the proposed settlement, the deadline and procedure for submission of any objections to the proposed settlement, and the date the Court will conduct a hearing on the Trustee's motion to approve the proposed settlement.

2. If for any reason the Court does not enter an order approving the proposed settlement in a form acceptable to Erie, then Erie in its sole discretion, may terminate this

Agreement, in which case this Agreement shall become null and void and the parties hereto shall be restored to the status quo ante existing prior to the execution of the Agreement.

3. If the Court enters an order (i) approving the proposed settlement; and (ii) declaring that Erie has no obligations whatsoever under the Policy, or prior policies, then when such order becomes final; that is, the settlement documentation has been approved by final order of the United States District Court for the Eastern District of North Carolina, and that order has become final, either because the time period in which to take a timely appeal from this order has expired or, in the case of an appeal from such order, the order has been upheld on appeal and all further rights of appeal or petitions for certiorari have been completely exhausted, then:

- a. Within ten (10) days of the date that approval of the settlement becomes final, and after all conditions set forth in Paragraph 3 are satisfied, Erie shall pay to IHI's Bankruptcy Trustee, Sixty Thousand Dollars (\$60,000.00). The payments described in this paragraph shall constitute the entirety of Erie's payment obligation pursuant to the policy and any previous policies issued by Erie.
- b. The Trustee and Erie, their affiliates, heirs, predecessors, assigns, and all third parties claiming through them, shall release each other and their respective affiliates, employees, directors, officers, attorneys, claim managers, reinsurers, agents or any professionals retained by them from any and all claims, debts, or demands, obligations, damages, liabilities, benefits, costs and causes of action, of whatever kind or character, known or unknown, past, present or future, that they have, had, or may have against each other or their respective affiliates, employees, directors, officers, attorneys, claim manager, reinsurers, agents and any professional retained by them, on account of or in any way growing out of, based or relating to (a) the Policy or Previous Policies issued by Erie in which International Heritage is named as an insured, and (b) a matter in which Erie, its affiliates, employees, directors, officers, attorneys, claim managers, reinsurers, agents and any professionals retained by them responded

to, handled and resolved their claims for coverage under the policy in connection with the underlying action.

4. The parties to this Agreement expressly assume the risk that acts, errors, omissions, matters, causes or things may have occurred which are not known or not suspected to exist by one or more of them and waive the terms and provisions of any statute, rule or doctrine of common law which either narrowly construe, releases, purporting by their terms to release claims in whole or in part, based upon, arising from, or related to such acts, omissions, matters, causes or things which restricts or prohibits the releasing of such claims.

5. The parties agree to execute promptly any and all documents of any nature or kind which the other parties may reasonably require in order to implement the provisions and objectives of this Agreement. The parties shall bear their own costs and fees incurred to implement the terms of this paragraph.

6. Notice regarding matters involving this Agreement to the Trustee shall be provided to:

James A. Roberts, III  
A. Graham Shirley  
Lewis & Roberts, PLLC  
1305 Navaho Drive, Suite 400  
P.O. Box 17529  
Raleigh, NC 27619-7529

Notice to Erie shall be provided to:

Patrick M. Aders  
Edgar & Paul  
P.O. Box 16099  
Chapel Hill, NC 27516-6099

or such other addresses as the parties to this Agreement may furnish to each other pursuant to the provisions of this paragraph.

7. The parties to this Agreement acknowledge and agree that neither entry into this Agreement nor the payment of any sum of money referenced in or pursuant to this Agreement shall constitute or be construed as an admission of liability by any party to any person or entity or as an admission of coverage under the Policy.

8. This Agreement constitutes the entire agreement between the Trustee and Erie regarding the settlement of IHI's claims for insurance coverage in connection with loss under the policies. The parties to this Agreement hereby agree that the only valid and enforceable modifications to this Agreement shall be those which we reduced to a writing and signed by all parties hereto, or by their respective counsel.

9. The validity and enforceability of this Agreement shall be governed by the laws of the State of North Carolina.

10. This Agreement is made and executed by each of the parties hereto with the advice of counsel, and no party hereto has been coerced or induced to make this compromise and settlement by any improper action of any other party hereto. This Agreement shall not be construed either in favor of or against any party by virtue of any rules of contract construction contended to be applicable to insurance policies, nor shall any party be deemed to be the sole drafter hereof.

11. By their signatures below, the undersigned represent and warrant that they are duly authorized to bind the party or parties on whose behalf they have executed this Agreement.



12. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and when taken together with the other signed counterparts, shall constitute one agreement which shall be binding upon and effective as to all parties.

IN WITNESS WHEREOF, each of the parties have executed this Agreement on the day and year indicated below.

Erie Insurance Company

Date: \_\_\_\_\_

By: \_\_\_\_\_

Holmes P. Harden, as Bankruptcy Trustee  
for International Heritage, Inc.

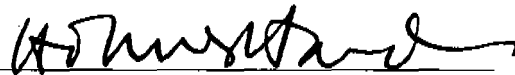
Date: \_\_\_\_\_

\_\_\_\_\_

CERTIFICATE OF SERVICE

I, Holmes P. Harden, do hereby certify that the foregoing document was served upon all parties of record by mailing a copy thereof to each such party at the address indicated below with its proper postage attached and deposited in an official depository under the exclusive care and custody of the United States Post Office in Raleigh, North Carolina and by public notice via 888-895-8385 and 919-981-4033 and by posting on the court's web page at [www.nceb.uscourts.gov](http://www.nceb.uscourts.gov). on the \_\_\_\_ day of \_\_\_\_\_, 2003.

MAUPIN TAYLOR & ELLIS, P.A.

BY:   
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N. C. State Bar No. 9835  
Post Office Drawer 19764  
Raleigh, NC 27619  
Telephone: (919) 981-4000

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Bankruptcy Administrator  
P. O. Box 3039  
Raleigh, NC 27602-3039

Chittenden Bank  
c/o Louis P. Rochkind  
Jaffe, Raitt, Heuer & Weiss  
One Woodward Avenue, Suite 2400  
Detroit, MI 48226  
Via Fax: 313-961-8358

Patrick Anders, Esquire  
Edger and Paul  
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Chapel Hill, NC 27514

James A. Roberts, III, Esquire  
A. Graham Shirley, Esquire  
Lewis & Roberts  
P.O. Box 17529  
Raleigh, NC 27619-7529

See Attached Mail Matrix and E-Mail List

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION

IN RE:	)	
	)	CHAPTER 7
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Debtor.	)	

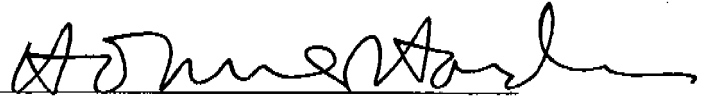
**NOTICE OF MOTION FOR APPROVAL  
OF COMPROMISE AND SETTLEMENT AND CERTIFICATE OF SERVICE**

To: All Creditors of International Heritage, Inc. and  
Other Parties in Interest

NOTICE IS HEREBY GIVEN of the Application of Trustee for authority to enter into settlement agreement regarding Erie Insurance Company in the amount of Sixty Thousand Dollars (\$60,000.00).

An objection to the motion must be filed with the Clerk, United States Bankruptcy Court, Post Office Box 1441, Raleigh, North Carolina 27602-1441, with a copy served on the Trustee whose name appears at the bottom of this Notice, within Twenty (20) Days from the date of this Notice. No hearing will be conducted on said objection unless the Court, in its discretion, deems a hearing necessary, or unless the party in interest requests a hearing. Any party requesting a hearing shall appear at the hearing in support of such request or he may be assessed with costs.

Date of Notice: February 13 2003.

A handwritten signature in black ink, appearing to read 'H. P. Harden', written over a horizontal line.

Holmes P. Harden  
State Bar No. 835  
Chapter 7 Trustee  
Maupin, Taylor & Ellis, P.A.  
P.O. Box 19764  
Raleigh, NC 27619  
Telephone: 919/981-4000

CERTIFICATE OF SERVICE

I, Holmes P. Harden, do hereby certify that the foregoing document was served upon all parties of record by mailing a copy thereof to each such party at the address indicated below with its proper postage attached and deposited in an official depository under the exclusive care and custody of the United States Post Office in Raleigh, North Carolina and by public notice via 888-895-8385 and 919-981-4033 and by posting on the court's web page at [www.nceb.uscourts.gov](http://www.nceb.uscourts.gov). on the \_\_\_\_ day of \_\_\_\_\_, 2003.

MAUPIN TAYLOR & ELLIS, P.A.

BY: 

Holmes P. Harden

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**FACSIMILE TRANSMISSION**

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TO: *Chittenden Bank  
c/o Louis P. Rochkind  
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One Woodward Avenue, Suite 2400  
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FROM: *Holmes P. Harden*  
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**DIRECT DIAL #: 919-981-4011**

CITY:

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